

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1247 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHOGILAL H SHAH

Versus

BHOGILAL ALIAS RAMANLAL BHAGWANDAS MODI DECEASED

Appearance:

MR JR NANAVATI for Petitioners

MR KV SHELAT for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/12/98

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. On being asked by the court, learned counsel for the petitioners is unable to satisfy this Court how the petitioners No.2, 3 and 4 are necessary or proper party to this litigation. It is also not in dispute that these three persons were not party to the proceedings initiated under section 41 of the Presidency Small Causes Court Act by the applicants-respondents. These three persons have

been impleaded as party and only one inference flows therefrom that they have been joined with some oblique motives. Be that as it may. Names of these three persons are ordered to be struck off from the civil revision application.

3. Learned counsel for the petitioner does not dispute that the applicants-respondents filed H.R.P. Suit No.4257/77 in the Small Causes Court at Ahmedabad. In this suit, the petitioner has taken the defence that he is not the tenant in the premises and the Small Cause Court has no jurisdiction to try it. After hearing the learned counsel for the parties and considering the material which has been produced on record, the suit aforesaid came to be dismissed on 31st March, 1980. In the said suit, it has been held by the Small Causes Court at Ahmedabad that there exists no relationship of landlord and tenant between the parties. Leaving apart the question whether that decision operates as res-judicata or not, but it is decided inter-se parties by the competent court that there exists no relationship of landlord and tenant between the parties. After that suit, I am of the considered opinion that only remedy available to the applicants-respondents for taking the possession of the suit premises from the petitioner was to file an application under section 41 of the Presidency Small Causes Act and accordingly that application has been filed. Curiously enough, in this application, defence has been taken by the petitioner that he is the tenant in the suit premises. This is nothing but only a malafide defence taken by the petitioner, which is clearly borne out from the fact that in H.R.P. Suit No.4257/77, it was his specific case that he is not the tenant of the premises. In these facts, learned court below has not committed any error much less a jurisdictional error in passing of the impugned order, which calls for the interference of this Court, under section 115, C.P.C.. This question otherwise also could not have been gone into again in these proceedings out of which this revision application has arisen.

4. In the result, this civil revision application fails and the same is dismissed with costs. Rule discharged. Interim relief, if any, granted by this Court stands vacated. Learned counsel for the respondents stated that he has been paid Rs.5000/- as his professional fees in this case by the applicants-respondents to provide them his professional services. Accordingly, the costs is quantified at Rs.5000/-.

zgs/-